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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,401	12/08/2003	David J. Broel	11287	9772

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,401

Applicant(s)

BROEL, DAVID J.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7 and 9 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 3-5,7, 9 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 1, 7, and 9 are objected to because of the following informalities:

Claim 1, 7, and 9, "by means of the length of said extensions being greater than the distance between said shaft and the inner surface of said flower holder" should be – by means of the length of said extensions being greater than the distance between said shaft and the inner surface of said vase--

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3-5, 7, 9 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the disc, base shaft, upper shaft, at least one prong, foam insert, and multiple elongated deformable extensions, does not reasonably provide enablement for the straps extending upwardly from the outer edge of the disc. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Applicant's specification states "straps 8 and 9 can be utilized to pull the entire unit upwardly out of case 11" on page 3, second paragraph. However, applicant's Fig. 1 illustrates the vase extending beyond the straps. It is unclear to the examiner how one

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of ordinary skill in the art would perform this function with the vase opening way above the end of the straps? Are the straps suppose to extend out of the top opening of the vase or do they extend out of slits in the side of the vase? Currently, Fig. 1 gives the impression that there are slots or slits in the vase. Should the vase structure have ended below the straps? Are the straps, elements 8 and 9, attached to each other? The specification does not provide a sufficient disclosure to clarify and clearly indicate how the straps function and their structure in relation to the vase.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,450,692 to Ruibal in view of French Patent FR 2620591 to Roder.

Regarding Claim 1, Ruibal teaches a cemetery flower holder (Ruibal Fig. 5 #12 and 48) ***for insertion into a cemetery vase*** (this language is merely intended use and the structure of Ruibal must merely be capable of insertion into a vase which it is) comprising a shaft and multiple elongated vertically deformable extensions (Ruibal Fig. 6 #14, 16, and 58) extending outwardly from the shaft and being disposed substantially 90 degrees thereto said extensions ***adapted to deform by contact with the inner surface of said vase*** (this language merely suggests that the structure be capable of

that function and does not positively claim insertion or combination with the vase, and Ruibal's structure is capable of this function) by means of the length of the extensions being greater than the distance between the shaft and the inner surface of the holder (Ruibal Fig. 5 #51 horizontal portion coming from element #14 and Col. 5 line 57), said extensions being respectively horizontally and vertically spaced, a base shaft (Ruibal Fig. 5 #14 below element #48) and an upper shaft (Ruibal Fig. 5 #14 above element #48) with a disc (Ruibal Fig. 3 #30) disposed there between.

Ruibal is silent on a foam insert substantially enveloping the upper shaft. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Ruibal by placing the foam of Roder (Roder English translation page 5 line 8) in Ruibal (Ruibal #48) for the advantage of arranging cut flowers in a vertical array.

Regarding Claim 3, Ruibal as modified teaches the end of the upper shaft remote from the disc is enlarged (Ruibal Fig. 2 #26 attaches to #14 and thus enlarges the width of the shaft).

Regarding Claim 4, Ruibal as modified by Roder teaches the disc comprises an upper surface and wherein at least one prong extends upwardly from the upper surface (Roder Fig. 4).

Regarding Claim 9, Ruibal teaches a cemetery flower holder (Ruibal #48) and a container/pot (Ruibal Fig. 1 #17) comprising a shaft (Ruibal Fig. 6 #14) and multiple elongated vertically deformable extensions (Ruibal Fig. 6 #16 and 58) extending outwardly from the shaft substantially 90 degrees thereto with the ends thereof in abutment with the inner surface of the container/pot and said extensions are deformed

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(this limitation inherently merely depends on the size of element #17 selected, the extensions are capable of deforming for a tight friction fit) by means of the length of the extensions being greater than the distance between the shaft and the inner surface of the holder (Ruibal Fig. 5 #51 horizontal portion coming from element #14 and Col. 5 line 57) said shaft comprising a base shaft (Ruibal Fig. 5 #14 below #48) and an upper shaft (Ruibal Fig. 5 #14 above #48) with a disc (Ruibal Fig. 3 #30) disposed there between, said disc comprising an upper surface.

Ruibal is silent on at least one prong extending upwardly from the upper surface. However, Roder teaches a plant support attached to a disc with a prong extending from the upper surface of the disc (Roder #4). It would have been obvious to one of ordinary skill in the art to modify the teachings of Ruibal with the teachings of Roder at the time of the invention for the advantage of securing foam to the disc for floral displays as taught by Roder.

Ruibal as modified teaches a container/pot, but is silent on explicitly teachings a vase. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Ruibal at the time of the invention since the modification is merely the selection of an old and notoriously well-known alternate equivalent container selected for a desired aesthetic appearance and does not present a patentably distinct limitation.

Response to Arguments

Applicant's arguments filed 21 November 2005 have been fully considered but they are not persuasive. Examiner maintains that the "adapted to" language is

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functional language. Applicant should amend by deleting adapted e.g. "said flower holder inserted in a vase and said extensions deform by abutting with the inner surface of said vase". Ruibal teaches extensions that are greater than the distance from the shaft to the vase (Ruibal Fig. 5 #51) as discussed in the above rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

22 February 2006